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July 6, 2017

Via CM/ECF System

Honorable Robert D. Drain
c/o Clerk of the Bankruptcy Court
United States Bankruptcy Court
Southern District of New York
300 Quarropas Street
White Plains, New York 10601

Re: **Jonathan M. Lilian, Chapter 7 Debtor**
S.D.N.Y. Case No. 13-23048(RDD)

Dear Honorable Judge,

The Debtor submits this letter in response to the letter of Wells Fargo Bank, N.A. (“Wells Fargo”) dated June 22, 2017 (the “Alleged Notice of Default”).

The Conditional Order entered on January 17, 2017, provides in part as follows:

ORDERED, that in the event of default by the Debtor in timely making payments specified in the preceding paragraphs a Notice of Default will be mailed to Debtor and Debtor’s Attorney **and emailed to Debtor’s Attorney at dkirby@ddw-law.com**. If Default is not cured within that **fifteen (15) days from the date of service of the Notice of Default** the Secured Creditor shall serve the Debtor and the Debtor’s attorney a proposed Order Granting Relif from the Automatic Stay in the same manner provided in this paragraph together with an Affirmation of Non-Compliance which may be entered without further notice of opportunity to be heard; and it is further

[emphasis provided]

A copy of the Conditional Order is enclosed for your reference.

The Alleged Notice of Default is void and of no effect for at least two reasons.

First, the Alleged Notice of Default does not provide fifteen days from the date of service to cure the alleged default. The affidavit of service annexed to the Alleged Notice of Default states the document was mailed on June 22, 2017, and sets a deadline of July 6, 2017 to cure the alleged default. July 6, 2017 is only fourteen days from June 22, 2017.

Second, Wells Fargo failed to comply with the required method of service. The Conditional Order requires service by email to Debtor's counsel. This requirement was not complied with. I have reviewed my email "in box" and "delete box", and have been unable to locate any email from Wells Fargo or its counsel that references or attaches the Alleged Notice of Default. Nor does Wells Fargo's affidavit of service allege that any email was sent.

While these deficiencies may seem minor, the parties agreed that the Debtor would be provided with fifteen days' notice to cure any alleged default. Wells Fargo has effectively shortened that to ten days, which is prejudicial to the Debtor and is not what the parties agreed to.

Debtor's counsel was supposed to receive email notification so she could immediately consult with the Debtor. By only mailing the document on Thursday, June 22, 2017, from Rochester, New York, Wells Fargo ensured the document would not be received until Monday, June 26, 2017. In reality, that provides only ten days' notice prior to the July 6th deadline. As such, Wells Fargo seeks to deprive the Debtor of rights provided to him in this Court's Conditional Order.

Lifting the automatic stay to permit a foreclosure of the Debtor's residence is a severe penalty. Wells Fargo should not be permitted to prejudice the Debtor by failing provide a proper Notice of Default.

For the foregoing reasons, the Debtor requests that the Court schedule a hearing to determine whether Wells Fargo's request for relief from the automatic stay is improper based upon the deficiencies in the Alleged Notice of Default.

Respectfully submitted,

/s/ Dawn Kirby

DK/